INDEX

PAGE

PETITION 1

POINT I—The local ordinance, the validity of which was involved on this appeal, directly collides with the federal statutes and regulations in a field which the federal government has completely pre-empted 5

POINT II—The ordinance in question violates the due process clause of the Constitution of the United States 13

CONCLUSION 18

Certificate of Counsel 19

TABLE OF CASES CITED

Adams v. Tanner, 244 U. S. 590 16

Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 .... 6, 12

Collins v. New Hampshire, 170 U. S. 30 14

Good Humor Corp. v. City of New York, 290 N. Y. 312 16

Hill v. Florida, 325 U. S. 538 6

McDermott v. Wisconsin, 228 U. S. 115 12

Pennsylvania R. R. Co. v. Public Service Commission, 250 U. S. 566 6

Plumley v. Massachusetts, 155 U. S. 462 14

Rice v. Board of Trade, Nos. 471 and 473, October Term, 1946 ..... 2, 6

Rice v. Santa Fe Elevator Corporation, Nos. 470 and 472, October Term, 1946 ..... 2, 6

Shollenberger v. Pennsylvania, 171 U. S. 1 ..... 12, 14

Weaver v. Palmer Bros. Co., 270 U. S. 402 17

STATUTES CITED

	PAGE
Horsemeat Act (41 Stat. 241, 21 U. S. C. §96)	2
Meat Inspection Act (34 Stat. 1260, 21 U. S. C. §§71-94)	2, 7
Regulations of the Department of Agriculture (Title 9, Code of Federal Regulations, 1945 Supplement, §§251-279)	2
Sanitary Code of the City of New York, §327, as amended	3, 9

IN THE

Supreme Court of the United States

October Term, 1946

No. 940

HILL PACKING COMPANY,
Petitioner (Appellant),

vs.

THE CITY OF NEW YORK, WILLIAM O'DWYER,
Mayor of the City of New York, *et al.*

PETITION FOR REHEARING

To the Supreme Court of the United States and the Judges thereof:

Comes now the above named Appellant, Hill Packing Company and by its counsel presents this, its petition for an order of this Court granting to the petitioner a rehearing of the above entitled cause. While this is presented in the form of a petition for a rehearing it is in fact a petition for a hearing.

The decision of this Court, dated May 12th, 1947, was rendered when the Court had before it merely a statement as to jurisdiction. There were before the Court no briefs, the appeal had not been argued and the contentions of your petitioner that the ordinance complained

of came into conflict with the federal statutes and regulations governing the sale and distribution of petitioner's products had not been presented to the Court. They were not so presented because petitioner believed that it was incumbent upon petitioner to present the preliminary question as to jurisdiction. That preliminary question petitioner felt was so clear that this Honorable Court would note probable jurisdiction. Having noted such probable jurisdiction petitioner believed it would then be entitled to present its argument in briefs submitted to the Court and to argue those contentions before the court.

Because the court did not have the benefit of those briefs and argument we feel that the court failed to recognize that the local ordinance came into direct conflict with the federal statutes and regulations. We feel that upon an examination of the local regulations and the federal regulations this court will recognize that under its decision in *Rice* v. *Board of Trade,* Nos. 471 and 473, October Term 1946, and in *Rice* v. *Santa Fe Elevator Corporation,* Nos. 470 and 472, October Term 1946, the ordinance complained of is clearly unconstitutional because it collides with the Meat Inspection Act (34 Stat. 1260, 21 U. S. C. Secs. 71-94), the Horsemeat Act (41 Stat. 241, 21 U. S. C. Sec 96) and the regulations thereunder promulgated by the Department of Agriculture effective November 1st, 1922, as amended (Title 9, Code of Federal Regulations, 1945 Supplement, Secs. 251-279).

Your petitioner urges that if the course suggested by Mr. Justice Reed and Mr. Justice Rutledge had been adopted, and probable jurisdiction had been noted we could have convinced this Court that there is such collision between the federal and the local regulations. We shall attempt in this petition to point out how these regulations do conflict. In support of your petitioner's contentions we respectfully show:

(1) The appeal directly involved the constitutionality of Paragraph 4, Section 327 of the Sanitary Code of the City of New York, as amended. The decision of the Court of Appeals upheld the constitutionality of the ordinance in so far as it affected your petitioner's product. The appeal from that decision therefore lay as a matter of right to this Court.

This Court has recognized that it had jurisdiction because it took jurisdiction and affirmed the judgment of the Court of Appeals.

Section 327 of the Sanitary Code of the City of New York, as amended, is printed in full at page 3 of our Statement as to Jurisdiction filed with this Court. Paragraph 4 of that ordinance, the validity of which is directly involved in this appeal, reads as follows:

> "4. Horseflesh, whether alone or combined with other ingredients, intended for animal feed shall not be brought into the City of New York, transported, or held, kept, stored, or offered for sale or sold unless decharacterized by harmless coloring or otherwise in a manner and with materials satisfactory to the Department of Health. This provision, however, shall not apply to horseflesh sold and transported to the New York Zoological Society or the Park Department of The City of New York."

(2) The appeal herein is from a judgment and order of the Court of Appeals of the State of New York which, in effect, has decided that the ordinance does not, insofar as it affects appellant's product, conflict with federal legislation and that the Appellant herein, must follow the ordinance's demands as to decharacterization until the federal government announced a different method of decharacterization. The aforesaid Court of Appeals also held that the ordinance was sufficiently definite and certain, was within the legislative competence of the City to

enact, was consonant with the requirements of the due process clause, and did not constitute an invalid delegation of legislative power. The opinion of the Court of Appeals is printed at page 11 of our Statement as to Jurisdiction filed with this Court.

(3) The appeal herein from the judgment and order of the Court of Appeals of the State of New York was allowed by the Chief Judge of the Court of Appeals on October 18, 1946 and the case was docketed and the record duly filed in this Court on January 23rd, 1947.

(4) On May 12th, 1947, without affording counsel the opportunity to present the points relied upon and without permitting counsel to argue the merits of the appeal, this Court entered the following order in a *per curiam* decision:

> "*Per Curiam*: The judgment is affirmed. Rice v. Board of Trade of the City of Chicago, Nos. 471 and 473, October Term, 1946, decided May 5, 1947. Mr. Justice Reed and Mr. Justice Rutledge agree only that probable jurisdiction should be noted. Mr. Justice Douglas took no part in the consideration or decision of this case."

(5) Petitioner respectfully urges that this Court in affirming the judgment of the Court of Appeals has erred. Petitioner respectfully submits that had petitioner been given an opportunity to file a brief and to argue the merits of the appeal, the judgment of the Court of Appeals would have been reversed.

Had petitioner been permitted to file a brief, among the contentions therein urged, would have been the following:

POINT I

The local ordinance, the validity of which was involved on this appeal, directly collides with the federal statutes and regulations in a field which the federal government has completely preempted.

Petitioner, a Kansas corporation, is engaged in the business of purchasing and slaughtering of live horses, purchasing carcasses of horses from various states, preparing and packing such horseflesh and vending and transporting its equine products throughout the various states of the Union and foreign countries.

Every operation of petitioner's packing plant at Topeka, Kansas, is continuously under the direction and control of the officials and inspectors of the Bureau of Animal Industry, a branch of the United States, Department of Agriculture. All live horses are inspected before slaughtering, the meat is again inspected after slaughtering, and all carcasses and parts of carcasses are similarly inspected, and only those which are passed by the officials and stamped in accordance with the federal regulations, are packed, transported and sold. Not only are the carcasses and parts of carcasses stamped as required by the act and regulations, but the container is stamped before shipment.

The horseflesh so shipped is frozen at petitioner's plant, packed into the cartons, tightly closed and stapled with metal staples, and reaches petitioner's distributor in New York City in its frozen state, where it is stored and distributed by the New York agent in its original package.

The undisputed testimony is that petitioner's horseflesh is absolutely fit for human consumption, is attractive in appearance, pleasant in flavor and equal in nutritional value to beef and other recognized meats used for human consumption.

As this Court pointed out in *Rice* v. *Santa Fe Elevator Corporation, supra,* when Congress legislates in a field which the States have traditionally occupied, the historic police powers of the State are superseded only in certain situations. They are superseded where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. R. Co.* v. *Public Service Com.*, 250 U. S. 566, 569; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148. The police power of the States is so superseded where the State also may produce a result inconsistent with the objective of the federal statute. *Hill* v. *Florida*, 325 U. S. 538.

As this Court said, it is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police powers of the States undisturbed, except as the state and federal regulations collide.

In the case at bar we shall endeavor to point out that the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress intended that the States shall retain no powers to legislate with reference to horsemeat which is used in interstate commerce. Whether or not, however, that scheme of federal regulation is so pervasive as to exclude any state action or whether it merely excludes state regulations not in conflict with the federal requirements is unnecessary to decide in the case at bar.

As was said by this Court in *Rice* v. *Board of Trade, supra,* if the state regulation violates the standards of the federal regulation or collides with the rules of the Secretary of Agriculture those state regulations are superseded under the federal rule.

In the case of *Rice* v. *Board of Trade* the federal and the state regulations did not conflict. Moreover, the Illinois Commerce Commission had not approved or adopted

any rules and therefore it could not be known whether there was any conflict with the federal law.

In our case Congress has acted, the Department of Agriculture has promulgated regulations by virtue of the authority conferred by Congress, the City of New York has acted and has acted in a manner so as to come in direct conflict with the entire scheme of federal regulation.

We desire to point out to the Court federal statutes and regulations thereunder controlling horsemeat as an article of interstate commerce.

By act of Congress approved March 4, 1907 (34 Stat. 1260, 21 U. S. C. 71-94), the Meat Inspection Act was passed. This Act regulates the use in interstate commerce of meat and meat food products.

The purpose of the Act is to prevent the use in interstate commerce of meat which is unsound, unhealthful, unwholesome or otherwise unfit for human food (21 U. S. C., Sec. 71). To effectuate this purpose the Secretary of Agriculture was given the power to promulgate rules and regulations for the enforcement of the Meat Inspection Act (21 U. S. C., Sec. 71). The Act provides for the examination by inspectors appointed for that purpose, both post-mortem and ante-mortem, for the marking, stamping or labelling as "Inspected and Passed" of meat found to be sound, healthful, wholesome and fit for human food and for the condemnation of all such meat as is unfit for human consumption (21 U. S. C., Sec. 72).

The Act further provides that any meat which contains dyes, chemicals, preservatives or ingredients which make such meat or meat products unsound or unwholesome or unfit for human food shall be destroyed by the inspectors (21 U. S. C., Sec. 74).

The Act further provides that all meat which has been "Inspected and Passed" shall be placed in a receptacle; that receptacle shall have a label which states that the contents thereof have been inspected and passed (21 U. S. C., Sec. 75).

The Act makes violators guilty of a misdemeanor and subject to punishment by fine not exceeding $10,000 or imprisonment for a period of not more than two years, or both (21 U. S. C., Sec. 88).

While the provisions of the Meat Inspection Act apply only to cattle, sheep, goats and swine, the Horsemeat Act (41 Stat. 241, 21 U. S. C., Sec. 96) makes all of the provisions of the Meat Inspection Act applicable to horsemeat.

Pursuant to the provisions of the Meat Inspection Act and the Horsemeat Act, regulations were promulgated by the appropriate federal agencies (9 CFR, 1945 Supp., Secs. 251-279).

These regulations, in order to effectuate the purpose of the act and in order to prohibit the use in interstate commerce of unwholesome meat provided a comprehensive scheme to carry out this basic purpose.

Section 252.3 of the Meat Inspection Regulations provides:

> "Every establishment in which horses are slaughtered for transportation or sale as articles of interstate or foreign commerce * * * which are capable of being used as food for man, shall have inspection in accordance with the terms prescribed in Section 279 of this subchapter."

Section 279 of the Regulations provides which horse slaughtering establishments shall have inspection, the separation of establishments where horses are slaughtered from those in which other animals are slaughtered, provision for ante-mortem and post-mortem inspection, the marking and labelling of horse carcasses and parts of carcasses, the branding with green ink instead of the purple ink used on beef, the labels for horsemeat or horsemeat products, the exporting of horsemeat and stamps and certificates required for that purpose, and

generally provides that all of the other regulations governing the inspection of meat are made applicable to the inspection of horsemeat, except where they are specifically inapplicable.

All of these regulations deal with horsemeat which is capable of being used as food for man.

Section 268.12 of these Regulations, which was relied on by the Court of Appeals of the State of New York, in deciding that there was no conflict insofar as your petitioner's product was concerned, deals not with horsemeat which is capable of being used as food for man and has been so pronounced after inspection by the Department of Agriculture.

The last cited section deals only with "dog food or similar uninspected article". It specifically provides under (a) "When dog food, or similar uninspected article is prepared * * *." It specifically provides under (b) as to what shall be required when "dog food or similar uninspected article" is prepared in an establishment which is not an edible product establishment. It speaks throughout of the preparation of the uninspected product. It is obvious that in (c) the Regulations in using the words "dog food" and providing that it shall be distinguished from articles of human food, are speaking of dog food or similar uninspected article as distinguished from horsemeat which has been inspected and has been pronounced as fit for human consumption.

The ordinance makes no such distinction.

The ordinance, Section 327 of the Sanitary Code of the City of New York, subsection 2, provides:

> "2. No carcass, or part of a carcass of a horse shall be brought into the City of New York, or held, kept, sold, offered for sale or given away in said city, until it shall have been inspected and passed as fit for human food by a duly authorized inspector of the United States Department of Agriculture and

shall have been marked, stamped or branded as having been so inspected and passed, or, in the case of parts of a carcass, unless such parts shall have been cut from a carcass or part of a carcass which had previously been inspected and passed and so marked, stamped or branded as hereinbefore provided."

The effect of this portion of the ordinance is to permit the sale for human consumption of horsemeat which has been inspected and passed as fit for human consumption by the United States Department of Agriculture.

Section 4 of that ordinance then provides that that same product which may be sold shall not be sold unless decharacterized if it is intended for animal feed. The ordinance is, therefore, in direct conflict with the entire scheme of federal regulation. The federal scheme permits the sale of horsemeat where it has been inspected and passed by the Department of Agriculture. Whether the intention be to sell it for human consumption or whether the intention be to sell it for animal feed is immaterial under the federal scheme.

When horsemeat is intended for animal feed the ordinance requires it to be decharacterized, even though it consists entirely of inspected meat which has been pronounced as fit for human consumption by the United States Department of Agriculture. This, we contend, brings the local and the federal regulation into direct conflict.

The very scheme is in conflict because the federal scheme of regulation places horsemeat in two categories (a) horsemeat which is fit for human consumption, and (b) horsemeat which is an ingredient of an animal food which consists partly of uninspected horsemeat.

The purpose of the federal scheme of regulation is to prevent the distribution for human consumption of horsemeat which is not fit for human consumption. This,

whether the horsemeat is sold as uninspected meat or is a component part of a dog food or similar uninspected article.

The local ordinance which permits the sale for human consumption, if the horsemeat is government inspected, prevents the sale of that very same horsemeat if it is intended for animal consumption, unless the horsemeat be decharacterized.

The federal regulation requires decharacterization only to distinguish a product which is not fit for human consumption from a product which is fit for human consumption. The purpose is to prevent the distribution to the public of deleterious and unwholesome food.

This can in no conceivable sense be the purpose of the local ordinance because the very same meat which may be sold for human consumption without decharacterization must be decharacterized if it is intended for animal feed.

In the *Rice* case, cited by this Court, in affirming the Court of Appeals, the Court pointed out that no actual conflict existed because there had been no impact of any specific order of the state agency on the Federal Act or the regulations of the Secretary thereunder.

In our case there has been an actual impact because the very provisions of the ordinance which are attacked as unconstitutional create that impact. As we see it, therefore, the basis of the decision in our case must have been that the enactment of the local agency did not come in conflict with the Federal Act and the regulations of the Secretary thereunder. This was in fact the basis of the decision by the Court of Appeals. The Court of Appeals said that both under Federal and local law the petitioner is required to decharacterize its product.

As we have pointed out above the only provision for decharacterization is found in Section 268.12, which does not apply to your petitioner's product. Petitioner's

product is U. S. Government inspected horsemeat fit for human consumption and not dog food or other uninspected article.

Thus in the case at bar there exists federal legislation under which rights have accrued to petitioner, to pack, transport and sell its product in interstate commerce. Yet when this same product while in interstate commerce is transported in its original carton (see *Leisy* v. *Hardin*, 135 U. S. 100; *Savage* v. *Jones*, 225 U. S. 501, 520; *Shollenberger* v. *Pennsylvania*, 171 U. S. 1, 22) into the City of New York or is held or stored by the petitioner in the City of New York, it becomes subject to confiscation by the local authorities and petitioner becomes liable to criminal penalties.

What this court said in *McDermott* v. *Wisconsin*, 228 U. S. 115, is clearly applicable to the facts in the case at bar. This court said:

> "Conceding to the State the authority to make regulations consistent with the Federal law for the further protection of its citizens against impure and misbranded food and drugs, we think to permit such regulation as is embodied in this statute is to permit a State to discredit and burden legitimate Federal regulations of interstate commerce, to destroy rights arising out of the Federal statute which have accrued both to the Government and the shipper, and to impair the effect of a Federal law which has been enacted under the Constitutional power of Congress over the subject."

In *Cloverleaf Co.* v. *Patterson, supra*, the State condemned what the federal laws permitted, a situation similar to that presented in the case at bar. This court there said (p. 169):

"Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture. To uphold the power of the State of Alabama to condemn the material in the factory, while it was under federal observation and while federal enforcement deemed it wholesome, would not only hamper the administration of the federal act but would be inconsistent with its requirements. Whether the sanction used to enforce the regulation is condemnation of the material or the product is not significant. Since there was federal regulation of the materials and composition of the manufactured article, there could not be similar state regulation of the same subject."

POINT II

The ordinance in question violates the due process clause of the Constitution of the United States.

A. We believe that on the first ground urged herein, the ordinance is clearly invalid. But we go further and say that even though it be held that the ordinance did not conflict with federal law, nevertheless it is invalid. We contend that in compelling petitioner to introduce a foreign substance into a product which is wholesome and fit for human consumption, the ordinance in effect prohibits the sale of a legitimate article of commerce, and thus deprives petitioner of its property without due process. Any federal legislation which compels the adulteration of a wholesome product as this ordinance does, would also be unconstitutional for the same reasons.

Petitioner's product is horsemeat which is wholesome and nutritious. It looks like horsemeat. It is sold as

horsemeat in packages clearly labelling the contents as such, and there is no attempt on petitioner's part to pass it off as anything else.

The ordinance does not prohibit petitioner from introducing a foreign substance into the product which would give it an appearance calculated to deceive the purchasing public. On the contrary, it compels the introduction of a foreign substance in order to change the nature and appearance of the product.

In requiring the petitioner to decharacterize its wholesome product, the City of New York has acted in complete disregard of the law as settled by this court in the *Oleomargarine* cases. (*Plumley* v. *Massachusetts*, 155 U. S. 462, *Shollenberger* v. *Pennsylvania*, 171 U. S. 1, *Collins* v. *New Hampshire*, 170 U. S. 30).

Before it became generally recognized as a staple food product two states attempted to legislate with reference to oleomargarine. In the *Shollenberger* case the State of Pennsylvania enacted a statute to prohibit the importation of oleomargarine into the State. This Court held that a State had no right to prohibit the introduction within its borders of an article of commerce which in its pure state is healthful.

In the *Collins* case the State of New Hampshire sought to accomplish the purpose of the Pennsylvania statute as to oleomargarine by enacting a law prohibiting the importation of oleomargarine unless it was of a pink color. The purpose of this statute was very much like the ordinance in the case at bar, that is, to prevent public deception. In the oleomargarine case the statute was to prevent people from buying oleomargarine in the belief that it was butter. In the ordinance under consideration the avowed purpose is to prevent people who buy horsemeat from believing that it is beef. This Court held the statute invalid because it was in practical effect prohibitory. It stated that the act was a mere evasion of the direct pro-

hibition contained in the Pennsylvania statute and yet, if enforced, the result would be the total suppression of the article. Said the Court:

> "In a case like this it is entirely plain that if the State has not the power to absolutely prohibit the sale of an article of commerce like oleomargarine in its pure state, it has no power to provide that such article shall be colored, or rather discolored, by adding a foreign substance to it, in the manner described in the statute. Pink is not the color of oleomargarine in its natural state. The act necessitates and provides for adulteration. It enforces upon the importer the necessity of adding a foreign substance to his article, which is thereby rendered unsalable, in order that he may be permitted lawfully to sell it. If enforced, the result could be foretold. To color the substance as provided for in the statute naturally excites a prejudice and strengthens a repugnance up to the point of a positive and absolute refusal to purchase the article at any price. The direct and necessary result of a statute must be taken into consideration when deciding as to its validity, even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect. Henderson v. Mayor of New York, 92 U. S. 259; Morgan's Steamship Co. v. Louisiana, 118 U. S. 455, at 462. Although under the wording of this statute the importer is permitted to sell oleomargarine freely and to any extent, provided he colors it pink, yet the permission to sell, when accompanied by the imposition of a condition which, if complied with, will effectually prevent any sale, amounts in law to a prohibition."

It is our contention that the doctrine of the *Oleomargarine* cases is controlling in the case at bar and that the Court of Appeals of the State of New York in refusing to follow the law laid down in these cases, fell into error which requires reversal by this Court.

B. Not only is the ordinance invalid because it conflicts with federal law and because it is prohibitory in nature, but we respectfully submit the ordinance is invalid as an arbitrary and unreasonable exercise of the police power. The testimony in the record discloses that the ordinance was enacted after some isolated instances in which certain retailers sold horsemeat for beef. In order to prevent the deception practiced in these few cases, the Department of Health of the City of New York amended Section 327 of the Sanitary Code, and among the new provisions included Paragraph 4.

We contended in the courts below and contend here that the few instances of deception which motivated the local authorities to amend the law did not justify the prohibition of plaintiff's product, a legitimate article of commerce. See *Adams* v. *Tanner*, 244 U. S. 590, 594; *Good Humor Corp.* v. *City of New York*, 290 N. Y. 312.

But assuming for the moment that some local legislation was necessary to protect the public against deception, the addition of Paragraph 4 to the other three paragraphs of Section 327 of the Sanitary Code did not, we submit, effectuate such purpose. By the provisions of Paragraph 4 the City created a classification which had no relation to the purpose of preventing fraud. Under Paragraphs 1, 2 and 3 of the ordinance petitioner may bring its product into the City, store it, offer it for sale, or sell it in the City without any requirement as to decharacterization, if such horse meat is intended for human consumption. All that is required where the horsemeat is sold for human consumption is a license. But where that

same horsemeat fit for human consumption is intended for animal food then it becomes subject to the requirement of decharacterization.

Thus the ordinance makes a distinction which is based upon the subjective intent with which the product is sold. Such distinction has absolutely no relationship to the fraud sought to be prevented. The test of the statute, whether the horsemeat is intended for human food or for animal food has no relation whatever to its being palmed off as beef since horsemeat intended for animal food can no more readily be sold as beef than can horsemeat intended for humans.

Obviously the regulations provided in Paragraphs 1, 2 and 3 of Section 327, which are adequate to protect against fraud in the sale of horsemeat intended for human consumption, are adequate where the intention is to sell the same product for animal feed.

It is petitioner's contention that the classification created by the amendment to Section 327 of the Sanitary Code is arbitrary and unreasonable. In *Weaver* v. *Palmer Bros. Co.*, 270 U. S. 402, the State of Pennsylvania enacted a statute forbidding the use of shoddy in the manufacture of comfortables. This Court found it to be in violation of the due process and equal protection clauses of the Constitution. This Court held that the provision could not be sustained as a measure to protect health, saying at page 414:

> "And the fact that the act permits the use of numerous materials prescribing sterilization if they are secondhand also serves to show that the prohibition of the use of shoddy, new or old, even when sterilized, is unreasonable and arbitrary."

Nor could the prohibition be sustained as a measure to prevent deception, because, this court held, the regulations that were adequate to control other articles of bed-

ding could be effectively applied to shoddy filled articles. So, in the case at bar, the measure to control the sale of horsemeat for human consumption was adequate to control horsemeat for animal consumption.

Conclusion

Petitioner respectfully represents to the Court and the testimony in the record discloses, that if Paragraph 4 of Section 327 of the Sanitary Code of the City of New York is enforced in accordance with the judgment of the Court of Appeals of the State of New York, petitioner's business would be seriously affected. The requirement of said Paragraph 4, which prohibits petitioner from transporting its product into the City of New York or storing it in the City unless decharacterized, would work a great hardship on petitioner with no comparable benefit to the general public that would outweigh the harm done. Not only will petitioner suffer from the operation of the ordinance in New York City, but if such ordinance remains operative and municipalities throughout the other States of the Union pass similar restrictive legislation affecting plaintiff's product each with differing requirements as to decharacterization, it would be practically impossible for petitioner to transport and sell its product in interstate commerce.

WHEREFORE, it is respectfully urged that this petition for a rehearing be granted and that the order of this Court affirming the judgment of the Court of Appeals of the State of New York be vacated and that the aforesaid judgment of the Court of Appeals be, upon further consideration, reversed.

Respectfully submitted,

ARNOLD J. BROCK,
Counsel for Petitioner.

Certificate of Counsel

I, ARNOLD J. BROCK, counsel for the above named petitioner, Hill Packing Company, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay and is in my opinion well founded in law and in fact and proper to be filed herein.

ARNOLD J. BROCK,
Counsel for Petitioner.